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ZALE LECTURE IN PUBLIC POLICY
STANFORD UNIVERSITY
MAY 9, 2005

Good evening. I want to thank the students and faculty in the Public Policy program for inviting me to speak about the state of the Federal Judiciary. Like all Stanford graduates, I enjoy returning to the Farm whenever I can, and tonight is no exception.

First, I commend and encourage those students who are studying public policy at Stanford. My interest in the subject is no less intense than yours. Beginning in the 1960s, I campaigned as a young man for candidates in my home state of Wisconsin and later I worked as an aide in the Wisconsin Assembly and the U.S. House of Representatives. I have served as a member of the Wisconsin Assembly and Senate, and for the last 26 years, as a member of the U.S. Congress, where I now chair the House Judiciary Committee. Now in my fifth decade as a political devotee, I firmly believe that public service is a noble calling – cynics, please don't laugh – so I urge the young people in this room to follow your passion and participate in the political process.

If you place credence in many of the news accounts published and broadcast these days, the Congress and Federal Judiciary are preparing for war – and I mean Old Testament, wrath-of-God-type stuff. While head-bumping is a natural occurrence between co-equal and independent branches of government, I do not subscribe to this overly dour review of congressional-judicial relations.

To be sure, we are experiencing a national discourse of sorts on the nature of what the courts do and their relationship to the national legislature. Sometimes these discussions inspire commentary from policy makers and judges that is borne of visceral emotion. This is a natural occurrence in a free Republic; if nothing else, I have learned through the years that democracy is messy. And while a commitment to civility is its own reward, the Constitution guarantees our right not just to disagree with a classmate or professor, but also a jurist, a president, or a congressman.

To illustrate that things aren't as bad as they may appear, I would like to highlight a few areas where the House Judiciary Committee is assisting the Federal Judiciary in discharging its duties. I begin with a topic that has caused this nation much pain in

recent months: courtroom security. Like all Americans, I grieve for Joan Lefkow, the federal judge in Chicago whose spouse and mother were murdered. This woman lost 2 loved family members because she executed her judicial duties as the law required. We must ensure such a tragedy does not occur again. To that end, I have joined many others in already taking steps to address court security vulnerabilities.

My staff has commenced a review of the Marshals Service and other issues related to judicial security. This review is part of what all committees in the House of Representatives are obliged to do, which is conduct oversight. I will work closely with the Judicial Conference, the leadership branch of the Federal Judiciary, on this project in the coming weeks with the goal of ensuring that our federal courts are safe and that judges need not fear for their lives or the welfare of their families because of decisions made from the bench.

I believe that creating and maintaining a professional court system is one of the fundamental obligations of any free republic because our citizens must have access to courts to resolve legitimate civil and criminal disputes. A well-functioning Federal court system requires money – which Congress adequately provides. I would like to see more money provided to the courts, and certainly the judges would like to see more, but even Congress has fiscal limitations. The bottom-line, though, is the Federal courts have sufficient resources to administer justice every day across the country.

I think most Members share my willingness to sympathize with judges on such matters as security and funding – illustrating that the relations of the First and Third branches of the Federal government are not quite as strained as some might suggest. But this does not mean that the Congress has abandoned its constitutional responsibility to conduct oversight by ensuring that the Judiciary is doing its job.

One aspect of congressional interest in court operations involves splitting the Ninth Circuit Court of Appeals into three new circuits – a position endorsed by the House last year. This split idea has been debated and kicked around in academic, legislative, and legal circles for 30 years.

I advocate a split because the facts are clear: the Ninth is too big in so many ways. It leads all circuits in total appeals filed and pending. It represents too many people and too many litigants over too large an expanse of geography. Much of its territory is adding people at a rapid clip. That's wonderful that people are choosing to live within the Ninth, but it does impact the Federal courts just as this population increase impacts the roads, schools, and public services.

Along with many other Members of Congress, I am greatly concerned about the

Ninth's inability – based on its size and workload – to do more of its work sitting as an *en banc*, or "full," bench on issues of great importance.

Most importantly, though, the Ninth's immense size is negatively affecting the quality of its legal decisions. The Ninth consistently has one of the highest – and many times *the* highest – rate of summary reversals by the Supreme Court. With 3000 separate combinations of 3-judge panels, the Ninth lacks coordination and consistency among the panels. As I have expressed to Chief Judge Mary Schroeder, the question is not **if** the Ninth will be split, but **when**.

My Committee also is investigating whether Congress needs to create an Office of Inspector General for the Federal Judiciary. Each major Department in the Federal government has a corresponding Inspector General, or "IG" in Washington-speak, who serves as a watchdog. IGs are empowered to protect the integrity of federal agencies by investigating program and management problems, especially by ferreting out waste, fraud, and abuse through audits and inspections. They promote good government, help protect the people's tax dollars, and report to Congress, which can take corrective legislative action when necessary.

I do not believe that creating an IG for the Judiciary will violate the separation-of-powers doctrine that promotes the independence of the three branches of government. Each of the branches are independent and have a job to do. The Judiciary isn't supposed to write law and the Congress cannot determine how a court will rule. But the branches are interdependent entities as well. As such, congressional fulfillment of its constitutional oversight responsibility of the Judiciary does not threaten judicial independence.

Congress has the power of the purse to fund the Supreme Court and lower federal courts. If the courts are not spending their resources judiciously, the American people through their representatives are entitled to corrective action. Congress created the lower federal courts, their subject matter jurisdiction, their rules, and their respective geographic domains. We always welcome judicial input, but the Constitution established that the lower federal courts function with Congress's blessing.

Now, it is one thing for Congress to monitor how the courts are set up; it is quite another thing to tell them how they must author opinions. Which brings us to the issue *de jour* of congressional-judicial relations.

The separation-of-powers doctrine ensures the independence of the three branches of government, including the Judiciary. While the Constitution does not immunize judges from public criticism, even scorn, the Constitution *does* insulate them from caving to outside pressures when discharging their duties. This is accomplished through the

constitutional guarantees of life tenure and undiminished compensation, provided they exhibit "good behavior" on the job.

Like other Members of Congress, I was not enthralled with the outcome of the *Schiavo* case in Florida. I was closely involved in the *Schiavo* case where Congress and the President went to extraordinary effort to ensure Terri Schiavo's civil rights were protected. My biggest beef with the Federal Judiciary's handling of the case involves the Federal Judiciary not accepting jurisdiction when Congress and the President enacted a law giving it to them. The new, full, and fresh review of the case's merits did not occur as required by the law.

While I vociferously disagree with the Federal Judiciary's handling of this case, that does not mean that Congress should respond by attempting to neuter the courts, that is, by preventing them from doing what they have done for 200 years: interpret the law.

Noted conservative Charles Krauthammer recently observed that

> [o]ne of the glories of American democracy is the independence of the judiciary. The deference and reverence it enjoys are priceless assets. The Supreme Court is the only institution that could have ended the Bush-Gore fiasco of 2000 with the immediacy, finality, and yes, legitimacy that it did. ... Moreover, and more generally, judicial independence and supremacy are necessary checks on the tyranny of popular majorities.

Krauthammer acknowledges that judicial activism is nonetheless alive and well, and characterizes the phenomenon as "deeply depressing." But he cautions us not to respond by assaulting the separation of powers or by pursuing remedies to regulate judicial decision-making through such extreme measures as retroactively removing lifetime appointees through impeachment.

This does not mean that judges should not be punished in some capacity for behavior that does not rise to the level of impeachable conduct. I think we can all agree that public servants, especially those with life tenure, must be accountable for their actions to co-equal branches of government as well as the American people. The appropriate questions are how do we punish and who does the punishing.

Congress answered both questions in 1980 when it passed the "Judicial Councils Reform and Judicial Conduct and Disability Act," which allows citizens to file complaints against federal judges for misconduct. The Act essentially permits the Federal Judiciary to judge its own – a very powerful responsibility that was granted by Congress. Under the Act, complaints are reviewed by the chief judge of the relevant circuit and, in

more serious cases, judicial councils within the circuit.

Sanctions vary under the statute, but it is possible for the Judicial Conference to recommend in egregious cases that an offending judge be impeached. In fact, I played a role in the three House impeachments in the 1980s after the Conference had sent the Judiciary Committee letters that were generated under color of the 1980 Act. In essence, the law worked then as intended. Unfortunately, now is a different story.

In this regard I was pleased to meet recently with Justice Breyer of the Supreme Court, who was tasked by Chief Justice Rehnquist to lead a commission studying the 1980 Act and the ethical state of the Judiciary. Chief Justice Rehnquist established this commission in response to my address before the Judicial Conference in March of last year. I expressed my view that the 1980 statute wasn't working as intended, that judges were not properly policing their behavior, and that Congress would step in if the Federal Judiciary did not do a better job discharging this responsibility.

Justice Breyer recently updated me on the commission's work thus far. I am pleased with the progress it has made and I look forward to working with the commission for the remainder of the congressional term on this project. Making sure this statute works as intended – with changes if necessary – is the most important judicial oversight item before the House Judiciary Committee.

Finally, I would like to discuss the issue of courts citing foreign sources of authority in their rulings. As I touched upon in the speech before the Judicial Conference last March, America's sovereignty and the integrity of our legal process are threatened by a jurisprudence predicated upon laws and judicial decisions alien to our Constitution and foreign to our system of self-government.

Federal courts have increasingly utilized foreign sources of law, as well as international opinion to interpret the United States Constitution. If this trend takes root in our legal culture, Americans might be governed by laws of other nations or international bodies that Congress and the President have expressly rejected. Inappropriate judicial adherence to foreign laws and tribunals threatens American sovereignty, unsettles the separation of powers, presidential and Senate treaty-making authority, and undermines the legitimacy of the judicial process.

The most recent and egregious recent example of this trend was the Supreme Court's 5-4 decision in *Roper v. Simmons*, which invalidated capital punishment in juvenile cases. Regardless of your views on this issue, the court's majority opinion lacks coherent and intellectual honesty.

To support the Court's invalidation of the law of 20 states, the *Roper* majority cited among other things, the U.N. Convention on the Rights of the Child, a treaty in which the United States government expressly reserved "the right . . . to impose capital punishment on any person (other than a pregnant woman) . . ." when signing. Even more troubling is the fact that the United States Senate never ratified this Treaty. As a result, the Court was expressly citing a Treaty to which the United States has never formally assented. Remember the first 3 words of the Constitution's preamble: "We the People." Public servants swear an allegiance to uphold the Constitution of the United States, not to look to French popular opinion or the ruling of a court in Zimbabwe.

The Declaration of Independence announced that one of the chief causes of the American Revolution was that King George had "combined to subject us to a jurisdiction foreign to our constitution and unacknowledged by our laws."

The authority of American government rests solely and irrevocably upon the consent of the governed. The American people have not consented to rule by foreign powers or tribunals, and have never authorized our courts to rely upon foreign judgements or pronouncements when interpreting either American statutory or constitutional provisions. America's elected representatives have an obligation to ensure that America's courts do not impose this rule upon them.

I am pleased to support as an original cosponsor a resolution that will receive Committee consideration in the coming months. This resolution reasserts the primacy of the United States, reaffirms the principles that informed America's Declaration of Independence, and safeguards the sovereignty for which America's Founding generation and those who have followed have fought and died.

To conclude, Congress will continue to monitor judicial operations just as the Judiciary will continue to evaluate our legislative work.

I truly respect the great majority of men and women who serve on the bench. Done properly, their work is critical for society to function. I'm hopeful the House Judiciary Committee's oversight and work will assist our friends on the bench in carrying out their important duties.

Thank you for your attention. Again, it is always good to come back to Stanford.

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